IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 110 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

SABARMATI INVESTMENT PVT LTD

Appearance:

1. INCOME TAX REFERENCE No. 110 of 1990
MR TANVISH BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 10/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

This reference is arising out of the cross reference application filed by the assessee as well as by the Department before the Tribunal.

2. At the instance of the revenue, the following question of law is referred to this Court for its opinion:-

(i) "Whether the Tribunal is right in law and on facts in deleting the addition of Rs.1,61,805/made by I.T.O. on account of accrued interest on the debentures of Ambalal Sarabhai Enterprises Ltd.?"

3. Similarly, at the instance of the assessee, the following two questions are referred to this Court for its opinion:-

(ii) Whether on the facts and in the circumstances the Tribunal is right in law in holding that the assessee company was not entitled to claim deduction of expenses of Rs.23,088/- u/s.57(iii) of the I.T. Act, 1961?

(iii) Whether on the facts and in the circumstances of the case the Tribunal was justified in law in approving reference to and reliance upon the judgment of Supreme Court in the case of Mac Dowel & Co. Ltd., 154 ITR 148 by the C.I.T. (A)?

4. As far as the first question is concerned, it is observed by the Tribunal in its order that the interest on debentures was payable on third day of June every year and interest for the period from 2-6-1982 to 1-6-1983 became payable on 3-6-1983. The assessee has received interest amounting to Rs.2,08,626/- pertaining to the period from 2-6-1982 to 1-6-1983 in the assessment year 1984-85 and the same was said to have been subjected to tax in the subsequent year. The inclusion of such income in assessment year 1984-85 was based on the method of accounting adopted by the assessee with regard to the said interest income. The Tribunal has also taken note of the provisions contained in Section 18 of the Act, which says that interest on debentures would be liable to tax only it becomes due for payment to the assessee. The interest on the aforesaid debentures became due for payment to the assessee on 3-6-1983 and prior to that date it could not be validly contended that the assessee became entitled to receive interest on the aforesaid amount of investment made in the debentures. Considering

these two aspects of the matter, the Tribunal has deleted the addition of income amounting to Rs.1,61,805/-.

5. Since the entire interest income on debentures was taxed in subsequent year and there was no dispute with regard to that fact, we are of the view that the Tribunal has rightly come to the conclusion of deleting the said interest income from the total income of the year under reference. We, therefore, answer question No.1 in the affirmative i.e. in favour of the assessee and against the revenue.

6. As far as questions No.2 and 3 are concerned, it is brought to our notice that the Tribunal has followed its earlier decision for assessment year 1982-83 and the Reference arising from the order of the Tribunal for that assessment year has already been withdrawn by the applicant - assessee.

7. Mr RK Patel, learned advocate for the applicant assessee seeks permission to withdraw this reference.

Accordingly, we grant this permission and decline to give any answer to questions No.2 and 3 referred to us at the instance of the assessee.

8. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)
zgs/-